U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE M. WILLIAMS and U.S. POSTAL SERVICE,
NEW HAVEN MANAGEMENT SECTION CENTER,
New Haven, CT

Docket No. 98-543; Submitted on the Record;
Issued February 8, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of disability on or after September 20, 1991 causally related to her November 30, 1977 accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on March 25 and July 23, 1997.

This is the second appeal in this case. In a May 4, 1995 decision, the Board found that appellant had not shown a change in the nature of her light-duty job and that the medical evidence was insufficient to establish that she sustained a recurrence of total disability on or after September 20, 1991, causally related to her November 30, 1977 employment injuries. The facts and history are set forth in the Board's May 4, 1995 decision and is hereby incorporated by reference.[1]

Following the issuance of the Board's decision, by letters dated April 16, 1996 and August 12, 1996, appellant asked the Office to reconsider her claim, and submitted additional evidence in support of her request. In merit decisions dated June 21 and October 24, 1996, the Office found that the evidence submitted in support of the reconsideration requests was not sufficient to warrant modification of the Office's prior decisions. By letters dated January 22 and May 19, 1997, appellant again requested reconsideration of her claim, and submitted additional medical and factual evidence. In decisions dated March 25 and July 23, 1997, the Office found the newly submitted evidence to be repetitious and therefore insufficient to warrant further review of appellant's claim.

[1] Docket No. 93-2366, issued May 4, 1995.

The Board finds that appellant failed to sustain her burden of proof in establishing that she sustained a recurrence of disability on or after September 20, 1991 causally related to her accepted employment injuries.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition for which compensation is sought is causally related to the accepted employment injury and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] This burden additionally includes the necessity of furnishing medical evidence from a physician who on the basis of a complete factual and medical history concludes that the disabling condition is causally related to the employment injury and supports the conclusion with sound medical reasoning.[3] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[4] Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[5]

In this case, the most recent merit decision of October 24, 1996 denied appellant's claim for a recurrence of disability on or after September 20, 1991 as appellant did not show a change in the nature of her light-duty job and the medical evidence of record did not establish a change in the nature or extent of appellant's work-related lumbosacral and cervical strains, temporary post-traumatic depression or mild right central herniated nucleus pulposus at L4-5, which supports the claim for recurrence of total disability on or after September 20, 1991, such that she can no longer perform her four-hour a day light-duty job.

Subsequent to the Board's decision dated May 4, 1993 appellant submitted a March 15, 1993 attending physician's report, Form CA-20a, and a series of narrative progress notes and reports dated November 14, 1991, June 1, July 13, August 31 and November 16, 1993, and February 15, May 10, August 9 and September 14, 1994, from her treating physician, Dr. Arthur Taub, a Board-certified neurologist.[6] In his attending physician's reports, Dr. Taub noted that appellant had been totally disabled since October 20, 1991 due to cervical and lumbosacral pain and traumatic intervertebral disc disease. By checking a box "yes," Dr. Taub indicated that he believed the conditions found were caused or aggravated by the employment activity. Without

[2] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

[4] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[5] *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

[6] Appellant also submitted copies of a June 4, 1992 attending physician's report and an October 29, 1991 narrative report which had previously been considered by the Office.

supporting rationale, however, Dr. Taub's opinion has little probative value and is insufficient to establish causal relationship between her disability beginning September 20, 1991 and her accepted injuries of November 30, 1977.[7] In his progress notes, Dr. Taub documents appellant's complaints and notes her progress, her attempts at weight loss, and her continuing treatment plan. In his November 14, 1991 report, Dr. Taub also indicated that it was beginning to look as though appellant might have to seek disability retirement. As none of these progress notes, however, contains any discussion by Dr. Taub of whether appellant was disabled from her light-duty job beginning September 20, 1991 due to her accepted work injuries, these notes are insufficient to meet appellant's burden of proof. Finally, in his August 31, 1993 narrative report, Dr. Taub stated:

> "It is my opinion that for a brief period, namely from September 20, 1991 to November 20, 1991, at which time you were employed at the [employing establishment], you were unable to work. However, after that time, when you had recovered from this illness, it turned out that you were still unable to work. This was not because of the viral illness, but because of your work-related injury (sic).
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> "I have repeatedly expressed the view in writing that as a result of your work-related injury (sic) you suffer permanent impairment of function both of the cervical spine (the neck) and of the lumbar spine (the low back). You also have noted to me that you have symptoms referable to the left eye and to the left knee. I, personally, have found no impairment of function of these structures. These structures however are not in my direct specialty and I have suggested, most recently in a report dated December 8, 1992 that an opthamologist and an orthopedic surgeon should be consulted to supplement my opinion.
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> "Let me state it again as clearly as I can. In my opinion you do not now have a viral illness of any consequence. You may have a mild form of arthritis. This does not disable you from gainful employment. The reason you cannot work is due to your work-related injury (sic)."

In his report, Dr. Taub stated, as he did in his prior reports of record, that appellant's recurrence of disability on September 20, 1991 was causally related to a viral illness, and not to her employment-related injuries. In addition, while Dr. Taub also indicated that, following her recovery from her viral illness, appellant was still unable to work due to accepted employment injuries, he did not explain how appellant's condition had changed such that she could no longer perform her light-duty job. Therefore, Dr. Taub's August 31, 1993 report is also insufficient to meet appellant's burden of proof.

Appellant also submitted attending physician's reports dated July 25 and September 27, 1995 and January 10, February 13, July 19 and September 11, 1996, from Dr. Albert Walters, a Board-certified internist and treating physician, who noted that appellant had been totally disabled since July 11, 1992 due to neck pain with spasm, back pain, lumbosacral and cervical strain, temporary post-traumatic depression, and mild right central herniated nucleus pulposus

[7] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

L4-5. While on each form Dr. Walters checked a box "yes," indicating that he believed the conditions found were caused or aggravated by the employment activity, without supporting rationale, these form reports have little probative value.[8] Appellant also submitted a July 7, 1995 narrative chart note from Dr. Walters, in which the physician diagnosed paravertebral spasm in the lower cervical region, but did not discuss appellant's ability to perform her light-duty work. In addition, appellant submitted a copy of a July 27, 1995 x-ray report of the lumbar, thoracic and cervical spine, as well as a February 11, 1996 magnetic resonance imaging (MRI) scan of the cervical spine, both of which revealed spinal abnormalities. Although the x-ray and MRI scan findings further support appellant's claim that she suffers from back and neck conditions, they fail to shed light on the issue of whether appellant had a recurrence of disability beginning September 20, 1991. Appellant also submitted an April 15, 1996 narrative report from Dr. Walters, in which the physician stated:

> "Due to an accident sustained on the job on November 30, 1977, [appellant] is now totally disabled. Although she did return to work from August 1991 [through] October 1991, she was unable to continue due to reoccurrence (sic) of symptoms. She, therefore, has not worked at all since October 1991."

This report lacks probative value, however, as Dr. Walters does not identify any change in objective findings which would indicate a worsening of appellant's condition, nor does he provide any medical rationale for his conclusion that appellant is totally disabled due to her November 30, 1977 employment injuries, which is especially important in light of earlier medical evidence from Dr. Taub which indicates that a systemic viral disorder was the cause of appellant's total disability beginning September 20, 1991.

Finally, appellant submitted an August 8, 1996 report from Dr. Walters, in which the physician stated:

> "As the primary care physician of the above named patient, we have only been involved in [appellant's] care for the past ten years. [Appellant] reports a work[-]related injury (sic) from 1977 which is causing her total disability. When we first became involved in [appellant's] care, MRI scanning was not available.
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> "As recently as February 1996, [appellant] did undergo an MRI [scan] which, in fact, did reveal some abnormality.
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> "As recently as July 1, 1996, the patient was again seen in my office for chronic, recurrent neck and back pain."

This report, however, similarly lacks any medical rationale for Dr. Walters' conclusion that appellant is totally disabled due to her November 30, 1977 employment injuries. Thus, as none of the evidence appellant submitted on reconsideration contains an opinion explaining how or why appellant's total disability on or after September 20, 1991 is causally related to her

[8] *Id.*

November 30, 1977 accepted injuries or supports a change in the nature of her light duty, appellant has failed to discharge her burden of proof.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further merit review on March 25 and July 23, 1997.

Under section 8128(a) of the Federal Employees' Compensation Act,[9] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,[10] which provides that a claimant may obtain review of the merits of the claim by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law; or
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> "(ii) Advancing a point of law or a fact not previously considered by the Office; or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[11]

In support of his January 22, 1997 reconsideration request, appellant attempted to submit relevant and pertinent evidence not previously considered by the Office, consisting of medical reports dated April 15, 1996 and January 21, 1997 from Dr. Walters. Dr. Walters' April 15, 1996 report was previously submitted by appellant and has already been considered by the Office. Therefore, it cannot constitute grounds for reopening appellant's claim for further merit review pursuant to section 10.138(b)(1)(iii). In his January 21, 1997 report, Dr. Walters stated:

> "[Appellant] is a 47[-]year[-]old female who has had persistent shoulder, back, and neck pain since 1977. She apparently first injured herself back in 1977 and has continued to have symptoms ever since.
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> "She first saw me in 1991 and historically has had symptoms which she has seen several physicians. She subsequently had an MRI scan of the neck this year that shows some disc disease which the patient claims was all secondary to that accident back in 1977.
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> "Despite multiple treatment including physical therapy and pain medication, she continues to have pain and apparently has been completely disabled since 1991."

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.138(b)(1).

[11] 20 C.F.R. § 10.138(b)(2).

While Dr. Walters' January 21, 1997 report is new evidence, it essentially repeats the information earlier stated in his August 8, 1996 report, and does not offer any relevant information not already before the Office at the time of its October 24, 1996 decision. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[12] Therefore, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on March 25, 1997.

In support of her May 19, 1997 reconsideration request, appellant submitted medical evidence from Dr. Walters, including attending physician's reports (Form CA-20a) dated January 21, March 17, April 17 and May 17, 1997, a work capacity evaluation form dated May 1, 1997 and a narrative report dated May 13, 1997. As none of the form reports contain an opinion explaining how or why appellant's total disability on or after September 20, 1991 is causally related to her November 30, 1977 accepted injuries or supports a change in the nature of her light duty, these reports are not relevant to the issue in this case and, therefore, are insufficient to require further merit review by the Office. With respect to Dr. Walters' narrative report, as it essentially repeats information contained in his prior reports, it does not constitute a basis for reopening appellant's claim for further merit review.[13] Therefore, the Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits on July 23, 1997.

[12] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

[13] *Id.*

The decisions of the Office of Workers' Compensation Programs dated July 23 and March 25, 1997 and October 24, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member